



Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12 VAC 30-50-226, 12VAC30-50-420 and -430
Regulation title	Amount, Duration and Scope of Services: Community Mental Health Services and Case Mgt
Action title	Community Mental Health Services Prior Authorization
Document preparation date	

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (A) a situation involving an imminent threat to public health or safety; or (B) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The Administrative Process Act (Section 2.2-4011) states that an agency may adopt regulations in an “emergency situation”: (A) upon consultation with the Attorney General after the agency has submitted a request stating in writing the nature of the emergency, and at the sole discretion of the Governor; (B) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of Subdivision A.4 of §

2.2-4006; or (C) in a situation in which an agency has an existing emergency regulation, additional emergency regulations may be issued as needed to address the subject matter of the initial emergency regulation provided the amending action does not extend the effective date of the original action. This suggested emergency regulation meets the standard at COV 2.2-4011(B) as discussed below.

The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled Amount, Duration and Scope of Services: Community Mental Health Prior Authorization (12 VAC 30-50-226, -420 and -430) and also authorize the initiation of the permanent regulatory promulgation process provided for in § 2.2-4007.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services. Item 306 OO of the 2009 Appropriations Act directs DMAS to implement prior authorization for community-based mental health services for children and adults. This Budget Item included emergency regulatory authority.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Department is promulgating this regulation to comply with Item 306 OO of the 2009 Appropriation Act that implements prior authorization review for community-based mental health services for children and adults.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The agency is proposing this regulatory action to comply with Item 306 OO of the 2009 Appropriation Act that gives DMAS authority to implement prior authorization for community-based mental health services for children and adults. In recent years the utilization of certain community-based mental health services has increased substantially. In order to address these expected increases in utilization the General Assembly provided DMAS authority to implement prior authorization of these services in order to ensure that such services are provided based on Medicaid service criteria.

Substance

Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.

The section of the Virginia Administrative Code that is affected by this action is: Amount, Duration and Scope of Services: Community Mental Health Prior Authorization (12 VAC 30-50-226, -420 and -430).

This action implements new prior authorization for Community Mental Health services for children and adults. DMAS already has regulations that address prior authorization for other services. Therefore those aspects of the Item 306 OO of the 2009 General Assembly are already in operation and need not be addressed in this package. The particular change implemented is the addition of a prior authorization requirement to case management services for seriously mentally ill adults and emotionally disturbed children (12 VAC 30-50-420), and for youth at risk of serious emotional disturbance (12 VAC 30-50-430). In addition, DMAS is adding this same requirement to the following services detailed in 12 VAC 30-50-226: Day treatment/partial hospitalization services, Psychosocial rehabilitation, Intensive community treatment, and Mental health support services.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.

This action is based upon Item 306 OO of the 2009 General Assembly, giving DMAS authority to add prior authorization to the community-based mental health services for children and adults. DMAS chose to implement prior authorization for the services noted because these services are expected to have undergone significant expansion in utilization.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments on this notice.

The agency/board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency/board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Catherine Hancock, Policy & Research Division, 600 East Broad Street, Richmond, Virginia, 23219, e-mail address: Catherine.Hancock@dmas.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

Participatory approach

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

DMAS is using the participatory approach to develop this regulatory scheme. Persons interested in assisting in the development of this methodology should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any).

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment.